



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2003

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2003-8518

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191733.

The City of Midland (the "city") received a request for information pertaining to a particular cause number. You inform us that most of the requested information has been released but claim that the remaining information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an arrest warrant. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (Vernon) (to be codified as amendment to Code Crim. Proc. art. 15.26) (emphasis added). Thus, the

warrant is public under article 15.26. Although you assert that information contained in this document is excepted from disclosure under sections 552.101 and 552.130 of the Government Code, the exceptions found in the Public Information Act do not apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, you must release an unredacted copy of this warrant to the requestor.

We turn now to your arguments for the remaining submitted information. You claim that social security numbers contained in the submitted information are confidential. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

You claim that the social security number falls under the federal Social Security Act because it was obtained pursuant to section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . ."

While you state that the collection of social security numbers "by police officers helps establish identities of criminals," you do not specifically state whether the city obtained or maintained the social security numbers at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the city to submit the social security number at issue in order to request criminal history information. We find that if the city obtained or maintains the social security numbers in order to request criminal history information from DPS, and if DPS actually requires or required the city to submit the social security numbers with its request for criminal history information, then the social security numbers are confidential under section 411.086 of the Government Code in conjunction with federal law. However, if this is not in fact the case, these social security numbers must be released.

You also contend that a portion of the submitted information is excepted under section 552.130. This section excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Pursuant to section 552.130, the city must withhold the type of information we have marked.

Finally, you note that the submitted information includes account numbers. Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Thus, pursuant to this section, the city must withhold the account numbers we have marked.

In summary, pursuant to article 15.26 of the Code of Criminal Procedures, the city must release an unredacted copy of the submitted arrest warrant. Furthermore, the city must withhold the social security numbers only as required by federal law and section 411.086 of the Government Code. We have marked information that the city must withhold pursuant to sections 552.130 and 552.136 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

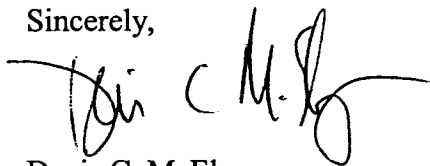
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", with a stylized flourish at the end.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 191733

Enc. Submitted documents

c: Mr. Pete Castaneda
3101 East I-20
Odessa, Texas 79766
(w/o enclosures)